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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION

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JANICE HARGROVE WARREN,

5

PLAINTIFF,

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VS. NO. 4:19-cv-655-BSM

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DR. CHARLES MCNULTY, et al,

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DEFENDANTS.

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DEPOSITION

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OF

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EARNEST LAMONT DUCKERY

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MONDAY, MAY 18, 2020

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A P P E A R A N C E S:

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ON BEHALF OF PLAINTIFF:

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ALSO PRESENT:

JANICE HARGROVE WARREN

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0003

I N D E X

WITNESS:	PAGE:
EARNEST LAMONT DUCKERY	
Direct Examination.....	5
Cross Examination.....	81

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E X H I B I T S

Exhibit One.....	25
Exhibit Two.....	32
Exhibit Three.....	38
Exhibit Four.....	62
Exhibit Five.....	63
Exhibit Six.....	66
Exhibit Seven.....	83

19
20
21

Reporter's Certificate..... 93

22
23
24
25

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0004

1 The deposition of Earnest Lamont Duckery
2 was taken before me, Debbye L. Petre, Certified Court
3 Reporter and notary public within and for the County
4 of Pulaski, State of Arkansas, duly commissioned and
5 acting, on Monday, May 18, 2020, beginning at the hour
6 of 10:00 a.m., at the Willow Conference Room, Regions
7 Bank Building, 500 Capitol Avenue, Little Rock,
8 Pulaski County, Arkansas.

9 Said deposition being taken in
10 accordance with the Rules of Federal Procedure and
11 pursuant to the provisions of the Arkansas Rules of
12 Civil Procedure at instance of counsel for the
13 Plaintiff in the above-styled case in the United
14 States District Court, Eastern District of Arkansas,
15 Central Division.

16
17 THEREUPON, the following proceedings were had,
18 to-wit:

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0005

1 P R O C E E D I N G S
2 WHEREUPON,
3 EARNEST LAMONT DUCKERY,
4 having been called for examination, and having been
5 first duly sworn, was examined and testified as
6 follows:

7 DIRECT EXAMINATION
8 BY MS. JENKINS:
9 Q Mr. Duckery, I'm Sarah Jenkins.
10 A Okay.
11 Q And I think you know everyone in the room.
12 A Yes.
13 Q First of all, I just want to thank you for
14 coming.

15 A Okay.

16 Q Have you ever had your deposition taken before?

17 A No.

18 Q No. Okay. All right. Ms. Petre is a court
19 reporter.

20 A Okay.

21 Q And she will be recording everything that you
22 say, and it will have the same effect as though you
23 are sitting in a courtroom. All right?

24 A Okay.

25 Q She will record your testimony. And she has had

0006

1 you raise your right hand, you have sworn to tell the
2 truth. And is there any reason why you wouldn't tell
3 the truth today?

4 A No.

5 Q No. Okay. Great. Thank you. She will need
6 for you to speak clearly --

7 A Okay.

8 Q -- because she is recording --

9 A Okay.

10 Q -- what you are saying, and we want her to get
11 it precisely.

12 A Okay.

13 Q If you say "uh-huh" or nod your head, she can't
14 get that, so if you would, make sure to say "yes" or
15 "no".

16 A (Indicated yes.)

17 Q I've got a joker here. He is going to tease the
18 court reporter. All right.

19 She can't record your nods and the like. So, if
20 you would, just make sure that you make a verbal
21 response. Okay?

22 A Okay.

23 Q Would you just state your name and address for
24 me, and then just sort of tell me a little bit about
25 yourself?

0007

1 A My name is Earnest Lamont Duckery.

2 Q Okay.

3 A My father is Earnest Duckery. So, didn't want
4 that to kind of come up and be like, "What is your
5 name," and I say -- you know, or somebody say, "Is
6 your name Earnest Duckery," and I say, "No, you know,
7 that's not me."

8 I was born and raised here in Little Rock, lived
9 in North Little Rock, grew up over there, went to
10 public school over in North Little Rock, graduated,
11 went to school at Louisiana Tech. They didn't know if
12 they were going to finish their accreditation program

13 for architecture. So, instead of waiting until my
14 senior year, I transferred to the University of
15 Arkansas at Fayetteville, I attended there from '90 to
16 '95, after basically starting over academically --

17 Q Okay.

18 A -- because the hours didn't transfer -- or
19 Fayetteville didn't accept the hours from Louisiana
20 Tech.

21 Q Okay.

22 A Upon graduation, I took the first job available
23 from the first company that replied to my resumes.
24 So, that brought me back home. Worked for Dewell Aery
25 Architects.

0008

1 Q Dewell?

2 A Dewell Aery Architects. He has passed away.
3 And then, I worked for Woods and Caradine, which was
4 Ron Woods and Wally Caradine, which happened to be the
5 largest minority-owned architecture firm in the state,
6 and worked for them for 13 years.

7 Q I see.

8 A And then, of course, the economical down-turn
9 happened around 2008, and I ended up at WD&D. I have
10 been there ever since.

11 Q Since 2008?

12 A Yes.

13 Q All right. Now, you mentioned that you attended
14 public schools in North Little Rock?

15 A Yes.

16 Q All right. Was that North Little Rock High?

17 A It was Ole Main at that time. I know it has
18 went through a couple of name changes from North
19 Little Rock High to Ole Main, back to West Campus, and
20 back to North Little Rock High.

21 Q Okay.

22 A But that was the high school that I attended.

23 Q And you have been with WD&D since 2008?

24 A Yes.

25 Q Okay. And what is your title there?

0009

1 A Project manager.

2 Q Project manager. What does that mean?

3 A Basically, if a principal architect or the
4 architect in charge, once we put together basically
5 what we call a resume to go out and get jobs. Once
6 they secure the job, and after we settle on schematic
7 designs with the owner, then I manage the project
8 until completion from that point --

9 Q Okay.

10 A -- under the supervision of a project architect.

11 Q All right. And who is your supervisor, or do
12 you just float from different project architects based
13 on project?

14 A Yes.

15 Q All right. And what is your salary there?

16 A I'm sorry?

17 Q What is your salary there?

18 A My wife would know that. If I had to
19 approximate what it is, I would say about \$56,000.00.

20 Q Okay. And you are a project manager. So, once
21 the design has been executed, the owner has accepted
22 it, then you handle the execution of that design,
23 seeing that it is constructed properly, giving
24 approvals and that sort of thing?

25 A No.

0010

1 Q All right. Tell me exactly what you do there.

2 A Basically what I do is, after schematic design,
3 I start to develop the project into design
4 development. Once it's into design development, then
5 other consulting engineers are on board at that time.
6 Depending on the project, along with the other
7 consultants, and if there -- if it's a project that's
8 going out to bid, we will work towards the
9 construction documents. If it's a project in which
10 there is a construction company already -- that the
11 owner has already chosen, we will submit drawings
12 during certain deadlines in order for them to get
13 pricing --

14 Q Okay.

15 A -- in order to make sure that building is within
16 budget.

17 Q All right. So, you do some of the designing,
18 and not just supervising the construction?

19 A Yes. We have someone that does supervision of
20 the construction.

21 Q Okay. All right. And who was your immediate
22 supervisor?

23 A Brad Chilcote.

24 Q And he supervises all the projects that you work
25 on?

0011

1 A No.

2 MR. KEES: Can you spell Chilcote for
3 the court reporter?

4 THE WITNESS: C-H-I-L-C-O-T-E.

5 MR. KEES: I know when she needs a
6 spelling because she looks at me.

7 BY MS. JENKINS:

8 Q All right. So, how are projects assigned by

9 Wittenberg?

10 A They are assigned by -- let's say, for instance,
11 if I'm towards the end of a project and there is a new
12 project coming up and I am available to assist or take
13 over that project, then they will assign me that
14 project. So, it's almost like whoever is becoming
15 available will work on the next project.

16 Q Okay.

17 A And with the different principals and architects
18 that we have in charge up there, if they are over that
19 project, then we work directly under them.

20 Q I see. All right. Was WD&D the designated
21 architect for the construction of Mills High School?

22 A No.

23 Q All right.

24 A We were the architects for the design of Mills
25 High School.

0012

1 Q All right. And when were you assigned to work
2 on that project?

3 A I can't recall. I can't recall.

4 Q What was the first thing that you did on that
5 project?

6 A The first thing that I did was schematic --
7 developing schematic diagrams and schematic design.

8 Q Would that have been in 2015, 2016 --

9 A 2016.

10 Q -- or 2017?

11 A 2016.

12 Q 2016. So, sometime in 2016 you began doing the
13 schematic designs?

14 A Yes.

15 Q All right. And when you say "schematic
16 designs", what exactly are you talking about? What
17 would a lay person understand that to mean?

18 A Okay. Make it as simple as I can.

19 Q Good.

20 A If you had a program of what you wanted in the
21 building, we would take that program and basically
22 incorporate that into the design of any particular
23 building that you wanted. With the State of Arkansas,
24 they have a standard for room sizes for high
25 schools --

0013

1 Q Okay.

2 A -- or middle schools or elementary schools. So,
3 they are all different. But with those programs, then
4 we begin to develop the project.

5 Q Okay. All right. So, what were you asked to do
6 in total for the Mills project?

7 A Develop the schematic design, the design
8 development, and construction documents.
9 Q What do you mean by "design development"?
10 A Design development is basically the stage
11 between schematic design and construction documents.
12 Take, for instance, if -- during design development,
13 we are coordinating with the consultants, mechanical,
14 plumbing, electrical, civil, structural engineers, in
15 order to make sure the schematic design that we come
16 up with actually can work, because we have limited
17 knowledge on mechanical, and that's their field of
18 expertise. And we might think that a duct is a
19 certain size, but if we want fresh air, if we have a
20 boiler or chiller, then that might cause a different
21 size. And with their expertise and coordinating that
22 through design development, eases us into construction
23 documents. And after construction documents is
24 basically when they bid on the building.

25 Q Did any other members of your firm work on this
0014 project?

1 A Yes.

2 Q All right. Who were they, and can you tell me
3 what they did?

4 A Oh, man. Yes. Caleb Tyson.

5 MR. KEES: What was that, Caleb?

6 THE WITNESS: Caleb Tyson.

7 MR. KEES: With a "C"?

8 THE WITNESS: Yes. Did the drawings for
9 the auditorium, because it's basically a
10 building within itself.

11 BY MS. JENKINS:

12 Q Okay.

13 A Nate Martin assisted on the project with the --
14 during the construction document phase of it.

15 Q Okay.

16 A And Brian Self.

17 Q S-E-L-F?

18 A S-E-L-F, yes. Did the interior design.

19 Q And when you say "interior design", what does
20 that include?

21 A Light fixtures, paint, mill work.

22 Q All right. Did you and -- is it Brad Chilcote?

23 A Yes.

24 Q Did you and Brad exchange e-mails during the

0015 process of development and redesign?
1 A Yes.

2 MS. JENKINS: Skip, I asked for those,
3 and I didn't come across any in the material
4

5 that you gave me. If you could follow up
6 with that, I would appreciate it.
7 MR. DAVIDSON: I will.
8 MS. JENKINS: Thank you.
9 MR. DAVIDSON: When we finish this, you
10 may have a list. So, would you send me an
11 e-mail with a list on it? I will make a
12 note.
13 MS. JENKINS: Sure. Okay.
14 MR. DAVIDSON: But if you will just send
15 me an e-mail, then I will get it to you.
16 MS. JENKINS: Certainly.

17 BY MS. JENKINS:

18 Q So, how did you begin that process, in terms of
19 doing the schematic design? How did you begin? Did
20 you -- how did you begin?
21 A The schematic designs were actually done by Chad
22 Young.
23 Q And he is in your office?
24 A He is the principal.
25 Q And so, then, what happened?

0016

1 A Basically, Chad did hand drawings. Hand
2 drawings you could have a -- you could do it on a
3 quicker schedule than computer-generated. So,
4 basically Chad did some hand drawings of what the
5 elevation of the building would look like, what the
6 campus layout would look like, and floor plans.
7 Q Okay.
8 A But it's all hand-sketched.
9 Q And so, when he completed the hand-sketching,
10 then he handed it off to you?
11 A Yes.
12 Q All right. And then, what did you do?
13 A I take it and I put it into the computer in the
14 program that we have called REVIT. And REVIT allows
15 us to do computer-generated drawings, along with
16 construction documents. It is a building information
17 model.
18 Q Okay.
19 A Some people refer to it as building model.
20 Q So, do you all sit and talk about goals and
21 objectives in terms of what you want to accomplish in
22 designing a facility, or do you all work
23 independently?
24 A It's a collaboration.
25 Q Collaboration. What were the goals and

0017

1 objectives set as a team for the Mills High School
2 project?

3 A The goal was basically to take the program that
4 was given to us by Derek Scott, and to develop the
5 campus for Mills. It wasn't just the high school.
6 Q Okay. When you say the program given to you by
7 Derek Scott, what was the program?
8 A It's basically a facilities program.
9 Q Okay.
10 A And it's a state -- that's where I go back to
11 where the state basically says, a classroom, for
12 instance, high school classroom has to be a minimum of
13 850 square feet.
14 Q Okay. Is that a hypothetical, or is that
15 exactly what is required?
16 A That's exactly.
17 Q Okay.
18 A We would take that minimum, but we would design
19 above that minimum. And basically, in the high school
20 program, if it asked that you provide an auditorium,
21 we make sure that there is an auditorium in the
22 building, we make sure that there is boys and girls
23 facilities for gym or sports to deal with Title I.
24 Q So, the program that he gives you, does it list
25 the kinds of facilities that are desired in terms of
0018
1 auditorium, five classrooms? How detailed is that
2 program?
3 A No.
4 Q It does not include that?
5 A No.
6 Q Okay. So, he hands you a document or just --
7 what does he give you as the program?
8 A He gives us a document, but we might, in turn,
9 ask him, "How many students do you have," in order to
10 design according to that document.
11 Q And how many students did you initially design
12 for?
13 A I can't recall.
14 Q You can't recall. Okay. Did you have any
15 personal goals in terms of what you wanted to
16 accomplish in the design, as an artist?
17 A No, I did not.
18 Q Okay. Did the team have any goals that they
19 wanted to accomplish as -- I mean, I view architects
20 as artists working in very concrete, no pun intended,
21 medium. Did you all have any sort of goals that you
22 wanted to accomplish?
23 A Yes.
24 Q And what were those?
25 A To meet the goals and standards set forth by the
0019

1 district.
2 Q And those goals and standards were established
3 in the program that Derek gave you?
4 A Yes.
5 Q All right. Okay. Good. And who was the
6 construction manager for this project?
7 A Baldwin & Shell.
8 Q And who was your initial primary contact?
9 A You will have to be more specific on that one.
10 Q Who did you talk to on a regular basis, or did
11 you talk to anyone on a regular basis at Baldwin &
12 Shell?
13 A I did talk to numerous people.
14 Q All right. And who were they?
15 A Mike Meadors.
16 Q And what is his capacity?
17 A He does estimating.
18 Q Okay.
19 A Roy Horsey.
20 Q Okay.
21 A He was the construction manager out there for
22 Mills.
23 Q Okay.
24 A And I can't think of Chuck's last name.
25 Q All right.
0020
1 A And there is one other person I can't think of
2 his last name -- I can't think of his whole name. I
3 can't recall his name.
4 Q Okay. Were you given, in this program, any
5 price objectives?
6 A Yes.
7 Q All right. And what was the price objective?
8 A I can't recall the price objective.
9 Q All right. Occupancy goals?
10 A Yes.
11 Q We are talking about --
12 A Yes.
13 Q -- in 2016 when you first -- we are still
14 talking about when you first began.
15 A Yes.
16 Q Okay. Do you recall the occupancy goals?
17 A 750 students.
18 Q So, if you have 750 students, how, in terms of
19 occupancy, are you planning? Do you limit it to 750,
20 or what about staff -- administrative staff and
21 teachers and cafeteria workers?
22 A Due to the program and the number of students,
23 we would take that and, by the classes that are
24 basically required to go into that school, create

25 those rooms. So, if that called for, for instance,
0021

1 two art classes, based on that number of students,
2 then we created two art classes.

3 Q I'm sorry, I got distracted. Would you say that
4 again?

5 A That's okay.

6 Q Based on the number of students?

7 A Yes. Based on the number of students, if that
8 requirement called for two art classes, for instance,
9 then we would create two art classes.

10 Q Okay. So, this program included the courses
11 that are to be offered in the facility?

12 A Yes.

13 Q All right. Do you recall the courses that were
14 included in that program?

15 A I can't recall all of them.

16 Q Okay.

17 MR. KEES: Sarah, could I inquire?

18 MS. JENKINS: Yes.

19 MR. KEES: Because he said project was
20 the whole Mills. So, I thought you were
21 talking about Mills Middle. Are you just
22 talking about Mills High School right now?

23 THE WITNESS: I'm just talking about
24 Mills High School right now.

25 MR. KEES: Okay. But you did testify

0022
1 something about you considered the project to
2 be all of Mills?

3 THE WITNESS: It was a campus project.
4 And what that campus project included was
5 Mills High, the football field, the track,
6 the bleachers --

7 MR. KEES: Okay.

8 THE WITNESS: -- and the field house and
9 the baseball field, along with the sanitation
10 facility.

11 MR. KEES: You clarified my issue. I
12 thought when you said "Mills campus" you may
13 have been talking about Fuller. But what you
14 have been talking about has nothing to do
15 with that?

16 THE WITNESS: No.

17 MR. KEES: Mills Middle?

18 THE WITNESS: No.

19 MR. KEES: Okay. I just wanted to make
20 sure I wasn't lost.

21 THE WITNESS: No, it has nothing to do
22 with Mills Middle.

23 BY MS. JENKINS:

24 Q Were there any material limitations?

25 A Could you be more specific?

0023

1 Q Did this program that Derek Scott gave you to
2 work with, were there any material limitations in
3 terms of --

4 A Yes.

5 Q Okay. And what were those limitations?

6 A Derek Scott's limitations, basically --

7 Q And we are talking about 2016 when you began
8 working on the project.

9 A His limitations did not come in 2016. They came
10 in 2017.

11 Q Okay. So, there were no limitations placed. It
12 was, "This is what we need"?

13 A Yes.

14 Q "These are the courses"?

15 A Yes.

16 Q "Our goal is 750 students"?

17 A Yes.

18 Q Okay. All right. And what was the scope of the
19 contract that you all undertook?

20 A I have no knowledge of the scope of the
21 contract.

22 Q All right. What is the extent of your knowledge
23 about the contract that was -- the work that was
24 undertaken?

25 A My understanding was to develop the high school,

0024

1 the football field, the track, the bleachers, the
2 field house, baseball field, and to install a pump
3 station to get rid of the sanitary facility that they
4 had out there.

5 Q Okay. We will talk about those in a few
6 minutes. All right?

7 A Yes.

8 Q What were your deadlines, deadlines for the
9 designs?

10 A There was no deadline for -- well, there is a
11 construction deadline.

12 Q Okay.

13 A And from a construction deadline, we can back it
14 up into a drawing deadline.

15 Q Okay. And what was that drawing deadline?

16 A I can't recall.

17 Q Okay. So, you began in -- sometime in 2016, you
18 began working on this project doing the schematic
19 designs, you had a program from Derek Scott, you had
20 hand drawings from Chad Young. And you took those two

21 plus the goals and objectives and went to the computer
22 and put in and generated the ultimate project design;
23 is that correct?

24 A Yes.

25 Q Okay. All right. Do you recall the date you

0025

1 completed the first design package?

2 A No.

3 Q 2017, 2016?

4 A 2017.

5 Q Okay. All right. What square footage was
6 included in your plan for the high school, do you
7 recall?

8 A I can't recall the exact square footage --

9 Q Okay.

10 A -- the initial high school was. I do not.

11 Q Okay. All right. Do you recall the estimated
12 cost of the construction?

13 A No.

14 (WHEREUPON, Exhibit One was marked for
15 identification.)

16 BY MS. JENKINS:

17 Q Okay. Would you take a look at Exhibit One?

18 A Yes.

19 Q And if you would look at the first page, at the
20 original message. This is from -- would you read and
21 tell us who it is from and who it is to?

22 A It is from -- oh, I'm sorry.

23 Q Come down to the original message.

24 A Yes. Come down to the original. It is from
25 Mike Meadors of Baldwin & Shell to Brad Chilcote and

0026

1 Jay Clark.

2 Q Now, who is Jay Clark?

3 A Jay Clark would have been the initial -- would
4 have been the -- Jay Clark would have been me.

5 Q Okay.

6 A But Jay was assigned to another project, and I
7 took over for Jay.

8 Q All right. Okay. And you are copied on this?

9 A Yes.

10 Q And what is the subject of this message?

11 A "Mills SD Draft."

12 Q And what does that mean?

13 A Mills Schematic Design Draft.

14 Q Okay. And what does the message say?

15 A "From yesterday's meeting."

16 Q So, this is dated Friday, March 11, 2016?

17 A Yes.

18 Q All right. So, yesterday's meeting would have

19 been March 10th --

20 A Yes.

21 Q -- of 2016. Did you attend that meeting?

22 A Yes.

23 Q All right. Would you take a look at the
24 attachment?

25 A (Witness reviews document.)

0027

1 Q Is this the document that was addressed at the
2 March 10th, 2016 meeting?

3 A Yes.

4 Q Okay. And what is the date at the bottom of --
5 let's look. There are 30 pages -- or 27 pages. What
6 is the date at the bottom of that?

7 A The date at the bottom is 3-8, 2016.

8 Q Is this the document -- did you generate this
9 document or was this document generated by Baldwin &
10 Shell?

11 A Baldwin & Shell.

12 Q All right. How did your work, or did your work
13 impact this document?

14 A Yes.

15 Q How did it do so?

16 A If you will refer back to the first schematic,
17 new Mills estimate by Baldwin & Shell.

18 Q This is page one --

19 A Yes.

20 Q -- of that?

21 A Or page two. If the e-mail is page one, this is
22 page two.

23 Q Okay.

24 A At the top line, "New High School". With the
25 program, the square footage came up to be 700 -- I

0028

1 mean, 177,170 square feet.

2 Q All right. And what was the estimated cost,
3 without contingency, for the new high school?

4 A \$34,424,519.00.

5 Q At a cost per square foot?

6 A \$194.30.

7 Q All right. Now, area description. Would you
8 read what is included in the area description?

9 A From top to bottom, number one, new high school,
10 number two, field house, number three, football field
11 renovation, number four, baseball, softball, and
12 practice field, number five, site work, number six,
13 concession stand and toilets, number seven, modify
14 existing locker room building.

15 Q What is the total square footage for the
16 project?

17 A The total square footage for the project is
18 517,859 square feet.
19 Q So, what you have said is that your drawings
20 impacted this document?
21 A Yes.
22 Q All right. Does this refresh your recollection
23 of the design that you generated and the square
24 footage of that design?
25 A Yes.

0029

1 Q And what would have been the square footage of
2 that design?
3 A 177,170 square feet for the high school.
4 Q For the school alone?
5 A For the school alone.
6 Q All right. And what is the estimated total
7 price for the total project?
8 A The estimated total price for the total project,
9 without contingency, is \$52,603,710.00.
10 Q All right.
11 A The cost with contingency is \$57,864,082.00.
12 Q What is the contingency?
13 A Contingency, you can look at it as unforeseen
14 conditions that might come up on a project.
15 Q Okay. All right. And do you recall what the
16 percentage of the contingency is?
17 A I do not.
18 Q Or was?
19 A I can't recall.
20 Q Okay. All right. Do you recall who attended
21 this meeting that was held on March 10th?
22 A No, I don't.
23 Q Would Derek Scott have been at this meeting?
24 A Yes.
25 Q Would Doctor Guess have been at this meeting?

0030

1 A No.
2 Q All right. You don't recall whether he was
3 there or not, or, no, he would not have been included?
4 A I know he wasn't at this meeting.
5 Q All right. On the March 10th?
6 A Yes.
7 Q But Derek Scott was at this meeting?
8 A Yes.
9 Q All right. Can you tell me what happened at
10 this meeting?
11 A I can tell you the purpose of the meeting.
12 Q Okay.
13 A The purpose of the meeting was basically, we had
14 given some schematic designs to Baldwin & Shell, and

15 Baldwin & Shell, with their estimator, estimated what
16 the project would be based on what we presented to
17 them, and that's how they came up with these numbers.

18 Q All right.

19 A These numbers were to see if the project was
20 within budget of the school district.

21 Q Okay. Do you recall anything else? What was
22 the discussion, did they like the design?

23 A Yes.

24 Q All right. Was the feasibility of the design
25 discussed?

0031

1 A Yes.

2 Q So, there was no objection to the adoption of
3 this particular design for Mills High School?

4 MR. KEES: Object to form, just for the
5 record.

6 BY MS. JENKINS:

7 Q Was there any objection by anyone at that
8 meeting to this schematic estimate and your design?

9 A Yes.

10 MR. KEES: Objection.

11 BY MS. JENKINS:

12 Q And what was that objection?

13 A Derek Scott said that the estimated cost was too
14 high.

15 Q All right. Did he say anything else?

16 A That we needed to get the cost down.

17 Q Did he make any suggestions in terms of how that
18 would be done?

19 A No.

20 Q He left it to WD&D and Baldwin & Shell to come
21 up with how to bring it within a better price point?

22 A To present him with possible solutions before he
23 would okay them.

24 Q Okay. Did he give you a figure as a target?

25 A Not yet.

0032

1 Q All right. So, March 10th, they liked the
2 design -- the group that was present --

3 A Yes.

4 Q -- liked the design, but Derek Scott said, "It's
5 too costly"?

6 A Yes.

7 Q And you were asked to scale it back or give him
8 options in terms of reducing the price?

9 A Yes.

10 Q All right. So, what did you do next?

11 A (No response.)

12 Q Or what did WD&D do next?

13 A Brad and I basically had a discussion on how we
14 could find some cost savings in the project.

15 Q All right. And do you recall any plan that you
16 made towards reducing costs?

17 A Later.

18 Q Later. But this --

19 A Not at this time.

20 Q Not at this particular time?

21 A But later.

22 (WHEREUPON, Exhibit Number Two was
23 marked for identification.)

24 BY MS. JENKINS:

25 Q All right. Let's take a look at Exhibit Two.

0033

1 And I apologize, but this is the best quality
2 production that I could get.

3 A Okay.

4 Q Let's look at the original message. This is
5 April 28th. Would you read who it is from, who it is
6 sent to?

7 A This is from Tommy Rutherford.

8 Q And who is that?

9 A I don't know his position, but he worked with --
10 he works at -- he worked with Baldwin & Shell at that
11 time.

12 Q Okay. You said "at that time". Is he no longer
13 there?

14 A I don't know.

15 Q Okay. All right. And what is the date of this?

16 A The date is April 28th, 2016.

17 Q All right.

18 A It's to Brad Chilcote and Roy Horsey, cc with
19 Mike Meadors.

20 Q So, you did not receive a copy of this?

21 A No.

22 Q Would you take a look at it and tell us what the
23 contents of this are? But it was sent to Brad
24 Chilcote, who is your supervisor; is that correct?

25 A That is correct.

0034

1 Q All right. Looking at the very bottom of it --

2 A Yes.

3 Q -- what is the text of the -- it looks like an
4 attachment that has been embedded in the message.

5 A The attachment is another schematic estimate
6 from Baldwin & Shell.

7 Q In order for Baldwin & Shell to generate this
8 schematic estimate, did WD&D provide them with a
9 revised schematic design?

10 A Yes.

11 Q All right. So, this schematic estimate reflects
12 modifications in the initial design that we looked at
13 on Exhibit One?

14 A Yes.

15 Q All right. Can you tell us what kind of changes
16 were made?

17 A In the program area.

18 Q Okay.

19 A If you look at the high school from the first
20 exhibit and estimate, the program area is 177,170
21 square feet. If you look at the second in Exhibit
22 Two, the program area is 153,055.

23 Q So, approximately 24,000 square feet were pulled
24 out of the project; is that correct?

25 A That's correct.

0035

1 Q All right. Was there an adjustment in the field
2 house?

3 A Yes. The field house square footage on Exhibit
4 One is 44,857. The field house on Exhibit Two is --
5 you have to excuse me, my eyes are kind of bad, but it
6 looks like --

7 Q And the exhibit is bad. I'm sorry.

8 A Yes. Looks like 43,968 would be my best guess.

9 Q All right. Now, it says -- the original says
10 "Football field renovations". Was that deleted in the
11 second schematic that you all submitted?

12 A Yes.

13 Q Then you have, "Baseball, softball and practice
14 fields". Did that remain included?

15 A Yes.

16 Q Was there an adjustment in that element of the
17 schematic?

18 A No.

19 Q All right. Site work?

20 A There is an adjustment in the site work program
21 area. In Exhibit One is 233,610. In Exhibit Two is
22 205,431.

23 Q All right. Then you've got, "Concession stand
24 and toilet building". Now, what exactly was the
25 concession stand and toilet building?

0036

1 A The concession stand and toilet building was an
2 appendage, or addition, to the field house.

3 Q Was it initially designed attached -- when you
4 say "an appendage", that means, to me, it's attached
5 to it.

6 A Yes.

7 Q Was it initially designed to be attached to the
8 field house?

9 A Yes.
10 Q All right.
11 A Oh.
12 Q Go ahead.
13 A No.
14 Q No?
15 A No.
16 Q It was not initially --
17 A No, it was not.
18 Q It was not initially designed --
19 A No, it was not.
20 Q It was a separate facility?
21 A Yes.
22 Q All right. So, here, that separate facility has
23 been cut about 3,000 square feet?
24 A Yes.
25 Q All right. "Modified existing locker room
0037
1 building," no change there?
2 A That's correct.
3 Q And if we look at, it's kind of hard to read it,
4 but the total project dropped from 517,859 square feet
5 to 205,491 square feet. That looks like almost half.
6 A Yes.
7 Q More than half?
8 A Yes.
9 Q Go ahead.
10 A And my eyes might be bad on the modified
11 existing locker room. On the first one, it looks like
12 6,575.
13 Q Yes.
14 A Is that a six on the Exhibit Two, or a four?
15 Q It looks to me like it is a six.
16 A Okay. It remained the same -- no.
17 Q It's hard to see. I think you are correct that
18 it is a four. I thought it was a six.
19 A And I can tell you why I'm asking. It's because
20 the total, the price, total cost, next to it changes.
21 Q Yes. Thank you. I assumed that that was a six
22 and had not looked at the comparison.
23 A It's a significant change.
24 Q So, what was the response to this modified
25 schematics?
0038
1 A "We are getting closer."
2 Q And whose opinion was that --
3 A Derek.
4 Q -- "We are getting closer"?
5 A Derek Scott.
6 Q Derek Scott. So, this is not it yet?

7 A No.
8 Q You were sent back to the drawing board?
9 A Yes.
10 Q Okay. And again, that is April 28th of 2016.
11 (WHEREUPON, Exhibit Number Three was
12 marked for identification.)
13 BY MS. JENKINS:
14 Q Let's take a look at Exhibit Three. You don't
15 have a Three?
16 A I don't have a Three.
17 Q Okay. Take mine.
18 A Thank you.
19 Q Looking at Exhibit Three, who is the -- there is
20 an e-mail cover. Who is it from and what is the date
21 and who is it directed to?
22 A Let's see. E-mail is from Tommy Rutherford, it
23 is to Brad Chilcote and myself, cc Mike Meadors,
24 subject line is "Design Development Level Estimate
25 Mills Replacement High School".
0039
1 Q And would you read the e-mail?
2 A Yes. "Gentlemen, please find in the attached
3 file the current DD level estimate and clarification
4 and assumptions. Please review and feel free to call
5 me with any comments. We have not shared this with
6 Derek yet."
7 Q Okay. So, you all submitted again revisions,
8 and we have generated their price schematics based
9 upon your change in design?
10 A Yes.
11 Q Is that correct?
12 A (Indicated yes.)
13 Q So, what is the purpose of this document?
14 A The purpose of this document, which you can see
15 it is a lengthier document, it's basically now the
16 contractor can share the drawings that we are
17 submitting to subcontractors, and they can give more
18 solid numbers on the pricing of items in the project.
19 Q Okay. Turn to page four.
20 A (Witness complies.)
21 Q Okay. What is the date on the bottom of this
22 new schematic?
23 A The date is 7-15, 2016.
24 Q Okay. And go to page four. Come down to the
25 bottom of the chart, go up to the third block from the
0040
1 bottom, and it says "Schematic Estimate Of Total
2 Project Cost Without Contingency". What is the square
3 footage?
4 A 155,908 gross square footage.

5 Q Okay. And what is the total cost?
6 A The total cost and --
7 Q Without contingency?
8 A Without contingency -- the reason -- I'm going
9 to have to read two numbers. And the reason I'm
10 reading them is because if someone hand-writes the
11 number in, that is the latest estimate versus the
12 computer-generated.
13 Q All right. Let me just -- that handwritten, I
14 wrote that.
15 A Okay.
16 Q And I apologize.
17 A Okay.
18 Q I thought I had erased it.
19 A Okay.
20 Q I thought I had erased it, because the numbers
21 didn't calculate correctly.
22 A Okay.
23 Q So, it was like \$400.00 off.
24 A Okay.
25 Q And I apologize. I thought I had erased all my
0041
1 little marks.
2 A Okay.
3 Q All right?
4 A Okay.
5 Q But read the --
6 A "The total" --
7 Q The typed. All right?
8 A The total cost, typed, is \$26,968,554.00.
9 Q All right. So, we are talking about the same
10 high school that you designed. And let's go back to
11 Exhibit One, March 8 of 2016. So, four months later,
12 you have taken a project, a \$52,603,710.00, and
13 adjusted it, or scaled it back to a facility that is
14 \$26,968,554.00?
15 A No.
16 Q All right.
17 A What we have done is that we have taken the high
18 school, which was \$34,424,519.00, and reduced it to
19 \$26,968,554.00.
20 Q All right. So, what you have done is, this
21 schematics is just the new high school?
22 A Yes.
23 Q Is that correct?
24 A That's correct.
25 Q All right. How do you take one part of that
0042
1 campus, how do you -- what adjustments did you make to
2 go from \$26 million, almost \$27 million, from \$34

3 million?

4 A Okay. To go from \$34 million to \$26 million, we
5 reduced the square footage.

6 Q Okay.

7 A And the square footage went down from 177,170 to
8 155,908.

9 Q All right. And that's approximately 21,262
10 square feet. Is that a good approximation?

11 A Yes.

12 Q And if the initial square footage cost per
13 square foot was \$194.30, if I multiply those two, that
14 cuts about \$7,455,000.00 off of the building?

15 A Sounds correct.

16 Q How did you reduce 21,000 square feet? How did
17 you -- what adjustments did you make, do you recall?

18 A Yes. For instance, the hallways. If I had a
19 set of schematic design drawings, I would be able to
20 explain it to everyone.

21 Q Okay.

22 A But from memory. To reduce the square footage,
23 basically the original high school had wider
24 corridors, the building was taller.

25 Q Okay.

0043

1 A In order to get the square footage out, the
2 hallways were brought in. So, take that -- take the
3 -- like the state minimum for corridors, if we
4 over-sized that in the initial drawings, schematic
5 design, as we get closer to this one, we are getting
6 closer to that state minimum.

7 Q Okay.

8 A We are not going to go below that state minimum,
9 we are just getting closer to it. With the initial
10 design, the classrooms were designed at 950 square
11 feet. Now, we are getting close to that state 850
12 minimum square footage.

13 Q Okay. Anything else?

14 A We reduced glass. We took out skylights, we
15 took out -- we took out light wells.

16 Q What do you mean by "light wells"?

17 A Light wells. Okay. Initially Derek Scott
18 wanted this to be a green building, a LEED certified
19 building. So, we had more LEED elements in the
20 building, which -- more natural daylighting to bring
21 the cost of lights down and heating and things like
22 that. And once you take out so much square footage,
23 if you are still not within budget, then you have to
24 look at other things to take out.

25 Q All right. Take a look at the -- let's go back

0044

1 to the 7-15 schematics. And attached to that are
2 Clarifications and Assumptions.
3 A (Witness complies.)
4 Q Page one, paragraph one -- it should be
5 paragraph two. What happened to the concession/toilet
6 building?
7 A The concession/toilet building was combined with
8 the field house.
9 Q All right.
10 A So, instead of it being a separate building, we
11 combined it.
12 Q Okay. In the initial schematics, the concession
13 stand and toilet building was estimated without
14 contingency of \$1,420,918.00.
15 A Yes.
16 Q Do you recall the total savings? Was that the
17 total savings by merging the two?
18 A That wasn't the total savings, no.
19 Q Okay. So, did you enlarge the field house?
20 A Yes.
21 Q Did you enlarge the field house to the extent of
22 5,000 square feet?
23 A No.
24 Q All right. So, some part of that \$1,420,000.00
25 was a savings?
0045
1 A Yes.
2 Q All right. Without knowing how -- what the
3 adjustment was in the field house at this point, the
4 maximum savings would have been about \$1,400,000.00?
5 A (Indicated yes.)
6 Q All right. Notice, again, page one of the
7 Clarifications. What happened to the practice field,
8 paragraph two?
9 A Paragraph two. The practice field has been
10 deleted from the project.
11 Q And that was \$84,663.00. Now, let me ask you
12 this question. You've got -- can you tell us a little
13 bit about the layout, where the high school was
14 located, where the field house was located, where the
15 baseball field and the football field were located?
16 Can you tell us a little bit about that layout?
17 A Sure. If everybody has their north, east,
18 south, west directions, once you entered the campus
19 from the west side, you had a --
20 Q Would you like to draw it for us?
21 A Sure. Or I can stand up and act it out if you
22 want.
23 Q Just draw it for us.
24 A Okay. We took a class where we are supposed to

25 act this out and show you without using illustrations.

0046

1 Q Oh, really?

2 A And you will be able to get the whole picture.

3 Q Okay.

4 A But I can definitely sketch it for you.

5 Q Yes. She can't put the acting out. That's the
6 problem.

7 A She can't get that. Okay. Let me see. You
8 have the highway, you have, what is that, 67/167, and
9 then you have Dixon Road. So, from Little Rock, if
10 you go south on 167 and you exit Dixon Road and you
11 drive about a quarter of a mile down the road, there
12 was an existing Fuller, I say middle school because of
13 my age -- well, I say junior high because of my age,
14 but it was the middle school. So, there was an
15 existing school. What we did was, was that the middle
16 school had to stay in operation while the high school
17 was being built. So, the high school was pushed back
18 behind the middle school on the west end of that
19 campus.

20 Q Okay.

21 A So, we demoed Fuller, we placed the new high
22 school directly behind Fuller. Just to the north of
23 the high school, we had future plans for a softball
24 field.

25 Q You said "future plans". So, the softball field

0047

1 was not included in any of the schematics that we have
2 discussed?

3 A Yes. But the construction of it was not, just
4 the placement --

5 Q Okay.

6 A -- of where it was going to go.

7 Q All right. Are the costs included in these
8 schematics?

9 A Yes.

10 Q Okay.

11 A So, you have the high school on the west, then
12 you had a wetland -- small wetland area. To the east
13 of it, you have the administration, Pulaski County
14 School District administration building just to the
15 east of the high school. To the north of the
16 administration building, you have the football field
17 and track.

18 Q Okay.

19 A To the east or to the south of -- I'm sorry. To
20 the south of the football field, but to the east of
21 the administration, you had an existing sanitation
22 area that the school had. To the east of it, you had

23 a maintenance building. To the east of the
24 maintenance building, you had the middle school. And
25 to the north of the middle school, you had the

0048

1 baseball field. And to the north of the baseball
2 field, you had the field house.

3 Q Okay. And what is the distance between the
4 field house and the baseball field?

5 A The distance between the edge of the --

6 Q Bleachers.

7 A Oh, to the bleachers?

8 Q Yes.

9 A Wow. I can't recall.

10 Q Well, then, to the edge of the field house to
11 the edge of the baseball field?

12 A The field?

13 Q Yes.

14 A Okay. From the edge of the field house to the
15 edge of the baseball field, I actually cannot recall
16 what that is. But the baseball field foul line runs
17 to the building of the field house.

18 Q So, family members who are attending -- based on
19 the design, who would be attending a baseball game,
20 sitting in the bleachers, not on the foul line; am I
21 correct?

22 A Correct.

23 Q Once you eliminate the concession and toilets,
24 they have to walk to the field house in order to get
25 to the bathroom; is that correct?

0049

1 A If you eliminated the -- if you eliminated the
2 concessions and toilets?

3 Q Yes.

4 A The reason I can't answer that question is
5 because they wouldn't be able to use the field house.

6 Q Why wouldn't they be able to use the field
7 house?

8 A It would be closed to them. It would be closed
9 to the public. The public would not be able to use
10 the school -- be able to go inside and use the
11 school's facility.

12 Q All right. So, family members attending a
13 baseball game, where do they go to the bathroom?

14 A At the concession and toilet area that was added
15 to the south appendage of the field house.

16 Q Okay. So, they don't have to go to the field
17 house -- go inside the field house, but they have to
18 go to this building that is attached to it?

19 A Yes.

20 Q And how far is that building from where family

21 members would be attending a baseball game?

22 A I can't say.

23 Q You can't say?

24 A No, I can't say.

25 Q All right. Let's go back to page one of the

0050

1 Clarification and Assumptions.

2 A (Witness complies.)

3 Q Let's look at -- we talked about the practice
4 field being eliminated. You had mentioned earlier
5 that the initial March 8, 2016 schematics included the
6 conversion of the sewer retention ponds to clean up
7 that area?

8 A Yes.

9 Q Was that excluded in the July schematics?

10 A In the schematic pricing or the schematic
11 design?

12 Q In the July 15, 2016, was the \$250,000.00
13 conversion eliminated?

14 A I can answer that question.

15 Q Huh?

16 A I can answer it, but it's not the way that you
17 are asking the question.

18 Q Okay. What happened to this conversion of the
19 sewer retention pond?

20 A Derek Scott removed that portion of it and put
21 it in a separate package.

22 Q What do you mean "in a separate package"?

23 A Sometimes we phase projects. With the deadline
24 that Mills had to open, we could not wait on us to
25 finish all the construction documents in order to

0051

1 start that project to build.

2 Q Okay.

3 A So, what we would do is that we would have a
4 civil package.

5 Q A silver?

6 A Civil, like a civil engineer.

7 Q Oh, civil.

8 A So, the civil package addressed that, and that
9 could move forward while we were continuing to do
10 drawings on the --

11 Q The physical plant?

12 A -- on the high school and the field house and
13 those parts of the project.

14 Q Okay. So, if eliminated from this, it doesn't
15 mean that it was no longer a part of the project?

16 A That's correct.

17 Q Okay. So, were the sewer retention ponds
18 converted to storm retention ponds?

19 A I can't recall.
20 Q You don't know if it actually happened or not.
21 But it was pulled out?
22 A Yes.
23 Q And put in a civil project?
24 A Yes.
25 Q Would you all have overseen that civil project?
0052
1 A Yes.
2 Q All right. But you don't recall whether it was
3 done or not?
4 A It was done, but I don't know if they put in --
5 I think they put in a lift station across the highway.
6 Q Explain that. You just lost me.
7 A It's kind of hard to explain. Basically, if
8 they had their own sanitation system, you have to put
9 something back. So, instead of it going to the area
10 it's going to, you -- the engineers come up with a way
11 to tie in and get it off the site.
12 Q Okay. All right. So, the school -- the high
13 school was reduced in size. We saw that. And there
14 are some exclusions that are listed in these general
15 conditions. We see that the concession/toilet
16 building was combined with the field house with some
17 savings there, costs for testing, inspection, and
18 quality control were excluded. Initially, \$100,000.00
19 was an allowance for cost for testing, inspection, and
20 quality control. What happens when you exclude costs
21 for testing, inspection, and quality control?
22 A If they have their price in the project, if it's
23 excluded, it doesn't happen, it goes back to the
24 owner. That money goes back to the owner.
25 Q Or it's used to reduce the cost?
0053
1 A Yes.
2 Q All right. But what happens to the project if
3 there isn't testing, inspection, and quality control?
4 What are we talking about? What is it that is tested,
5 what is it that is inspected in the life of the
6 project?
7 A Oh, it's a long list of things that are attached
8 to it. For instance, concrete.
9 Q Yes.
10 A If they pour a slab, they take samples from the
11 truck, the cement that day, and they test it to make
12 sure that it doesn't slow too much, that it will meet
13 compression strength when it is supposed to.
14 Q So, if testing is excluded, that test would not
15 occur during the construction phase; is that correct?
16 A Well, not that test. That's something that is

17 in our specifications and they have to report -- they
18 have to report that.

19 Q All right. They have to do that?

20 A Yes. I was saying, from an architectural
21 standpoint versus a civil standpoint, because what
22 they would have tested, I wouldn't have any knowledge
23 of that.

24 Q Okay. But you don't recall what tests and what
25 inspections and what quality control would be excluded

0054

1 here?

2 A No.

3 Q All right. How would that information be
4 determined? What testing would have been eliminated
5 as a result of excluding it from this?

6 A I wouldn't have any knowledge of that.

7 Q Okay. Historically, on other projects, what
8 testing, inspection, and quality controls are normally
9 included?

10 A For civil, I don't know.

11 Q So, when you designed the original schematics
12 March 8 for that March 10th meeting, you had obviously
13 included some testing, inspection, and quality
14 control, because Baldwin & Shell had estimated
15 \$100,000.00 for it; is that correct?

16 A Uh-huh. (Indicated yes.)

17 Q But you don't know what that would entail, but
18 you just put it in, anyhow?

19 A I didn't put that in. Baldwin & Shell -- WD&D
20 did not put that in.

21 Q All right. So, that's a Baldwin & Shell insert
22 into the contract?

23 A Yes -- no, not in the contract. Maybe in the
24 pricing.

25 Q In the pricing?

0055

1 A Yes.

2 Q Okay. Just a couple of other things. Let's
3 look at -- go to page three, Interiors.

4 A (Witness complies.)

5 Q Paragraph four. I have, "Costs for visual
6 display devices and Smart Boards." The March 8th
7 included \$40,000.00 for visual displays and devices.
8 What exactly are those visual display devices?

9 A The visual display devices could be projectors.

10 Q Okay. And those, in the July 15th are assigned
11 to the owner, the owner is going to furnish, but in
12 the March 8th, they were going to be included. The
13 March 8th included scoreboard allowance. Let's see if
14 we can find that scoreboard allowance.

15 MR. KEES: Page 16.

16 MS. JENKINS: Thank you.

17 BY MS. JENKINS:

18 Q Page 16, second block.

19 A Which one are you in?

20 Q This is the 8th, the March 8th.

21 A March 8th?

22 Q Yes. Exhibit One.

23 A Yes.

24 Q This is the baseball, softball field, practice
25 fields.

0056

1 A Okay.

2 Q Okay. And it shows a scoreboard allowance of
3 \$50,000.00?

4 A Uh-huh. (Indicated yes.)

5 Q And was that eliminated in the July 15th?

6 A (Witness reviews document.)

7 Q Now, I think the scoreboard allowance was even
8 higher than that. Let's see if we can't -- there has
9 got to be another --

10 A Yes, it was eliminated per instructions.

11 Q Okay. So, you had initially included it in your
12 design?

13 A Yes.

14 Q All right. And who gave the instructions to
15 eliminate?

16 A Derek Scott.

17 Q How frequently did the team meet? You and Brad
18 and Rutherford and Horsey, how often did you all meet
19 before settling -- reaching -- a decision was made on
20 what the project would ultimately look like?

21 A I can't recall. I can't recall.

22 Q You can't recall how often you all met?

23 A No.

24 Q At any time, did Doctor Guess attend any of
25 those meetings?

0057

1 A No.

2 Q Who were the representatives of the district at
3 those meetings?

4 A Only Derek Scott.

5 Q Okay. As I looked over the Clarification and
6 Assumptions, on 7-15 of 2016, page two of six, item
7 four, you have said that that exclusion of the
8 demolition or conversion of the sewer retention ponds
9 was simply taken out, not eliminated from the design
10 of this facility?

11 A That's correct.

12 Q That's correct. Okay. Look at number five.

13 "We have excluded undercut and replacement of existing
14 soils at the main building, mass rock excavation,
15 trench rock excavation and trench undercutting, and
16 are carrying this as a below the line value." Would
17 you explain the meaning of that, having excluded
18 undercut and replacement of existing soil? Now, is
19 this a part of your exclusion or is this a Baldwin &
20 Shell decision?

21 A This is not a WD&D decision.

22 Q All right. What does that mean to you in terms
23 of execution of your design?

24 A The condition of the soil was basically not as
25 they expected, so the undercut and fill that they

0058

1 might have had to do, they might not have had to due
2 to discovery from a soils bore report that notified
3 them that the soil was different.

4 Q So, what you are telling me is that it does not
5 mean that they are simply not going to bother with the
6 soil, that whatever the soil is, it's going to stay as
7 it is? As an architect, is that a meaning that you
8 would not include or understand from that paragraph?

9 A I don't understand the question.

10 Q All right. I'm glad you said that, if you don't
11 understand. "We have excluded undercut and
12 replacement of existing soils at the main building,
13 mass rock excavation, and are carrying this as a below
14 the line value." Does that mean that soil conditions
15 could remain as is?

16 A (No response.)

17 Q As an architect reading that?

18 A The answer is more complicated than "yes" or
19 "no".

20 Q Okay.

21 A Basically, from my recollection at Mills, due to
22 the rock quarry being close, half of the building was
23 on rock, the other half was not. So, the discovery
24 that half of the building was on rock means that you
25 have to excavate less. It doesn't mean that you can't

0059

1 take the money out, because you have to drill deeper
2 into the rock to remove the rock. The front portion
3 of it, since it's not rock, then you have to continue
4 with that fill.

5 Q To continue with that field?

6 A To remove the bad soil and bring good soil in.
7 That's the easiest way to say it.

8 Q That fill. Okay.

9 A Yes. In order to fill it to compact it for the
10 building to sit on it, is the easiest way to kind of

11 explain that.

12 Q So, this doesn't mean they are simply going to
13 leave it as is? You don't know, or --

14 A Yes.

15 Q As an architect whose design is going to be
16 constructed, what would be your best expectation
17 regarding undercut and the like?

18 A That's not our field of expertise.

19 Q Okay.

20 A That is something we rely on the soils report
21 and the civil engineers, along with the structural
22 engineers, to coordinate.

23 Q Okay.

24 A And to advise us, since that's their field of
25 expertise.

0060

1 Q Let's take a look at -- you mentioned the
2 auditorium and that this facility was designed for
3 750. Did that figure change as part of the reduction?

4 A Yes.

5 Q And what were the occupancy goals, based on
6 student population?

7 A Derek Scott notified us that the student
8 population would be no more than 700.

9 Q No more than 700, rather than 750?

10 A Yes.

11 Q And so, everything was adjusted --

12 A To 700.

13 Q -- to 700?

14 A (Indicated yes.)

15 Q How many seats was the auditorium designed for?

16 A I can't recall.

17 Q You can't recall. Okay. As an architect and
18 artist, as you compare the initial building with the
19 July design, what is your assessment of the two
20 projects as a comparison?

21 MR. DAVIDSON: You are asking for an
22 opinion here? Because he is not here as an
23 expert.

24 MS. JENKINS: No. As having designed
25 these as an artist, I want to know what he

0061

1 thinks about the two buildings, the
2 comparison of the two buildings.

3 MR. DAVIDSON: It sounds a lot like an
4 opinion. So, he is not here as an expert.

5 MS. JENKINS: No, I'm not asking for --
6 well, perhaps -- let me rephrase it.

7 MR. DAVIDSON: Go ahead.

8 BY MS. JENKINS:

9 Q Were you pleased with your initial design?
10 A Yes.
11 Q Your March 8th of 2016 design?
12 A Yes.
13 Q Was the July 15th, 2016 design adopted?
14 A At that time, yes.
15 Q So, this became the plan? You hit the target?
16 A Yes. For the goal at that time, yes.
17 Q All right. For the goal at that time. Did the
18 goal change subsequently?
19 A Yes.
20 Q And how did that goal change?
21 A The goal changed to make sure that we could get
22 everything in for the money that the school district
23 had allowed.
24 Q And what was the amount the school district
25 allowed?

0062

1 A I can't recall.
2 Q You can't recall?
3 A No.
4 (WHEREUPON, Exhibit Number Four was
5 marked for identification.)
6 BY MS. JENKINS:
7 Q If we look at -- let's take a look at Exhibit
8 Four, September 1 e-mail.
9 A (Witness complies.)
10 Q Okay. Looking at the original message, would
11 you tell us who it was from, who it was sent to, and
12 the subject?
13 A Let me see here. The original message is from
14 Tommy Rutherford of Baldwin & Shell, it was sent to
15 me, and it is cced to Brad Chilcote and Roy Horsey.
16 Q Okay.
17 A And it's "Mills Value Analysis".
18 Q All right. At the bottom of the next page, it
19 says -- at the top of the page says "Design
20 Development Estimate 8-12, 2016".
21 A (Witness reviews document.)
22 Q All right. From July 15 to 8-12, that's
23 approximately 30 days, has the target changed -- has
24 the target price changed?
25 A Yes, it has. Yes.

0063

1 Q Okay. And how has that target price changed?
2 A Let's see. The July 15, 2016, the schematic
3 estimate, total project cost without contingency is
4 \$26,968,554.00. On 8-12-16, for the high school, the
5 price is \$27,361,573.00.
6 Q So, that's approximately a \$400,000.00 increase

7 in price; is that correct?
8 A Yes.
9 Q Just of the high school?
10 A Yes.
11 Q And do you recall what that approximately
12 \$400,000.00 referenced?
13 A No, I can't recall.
14 Q You don't recall?
15 A No.
16 Q Okay. Now, did you see any -- let me just back
17 up a second. Was the July 15, 2016 adopted as the
18 contract?
19 A (Witness reviews document.)
20 (WHEREUPON, Exhibit Five was marked for
21 identification.)
22 BY MS. JENKINS:
23 Q Take a look at Exhibit Five.
24 A Due to what I have in front of me, no.
25 Q What exhibit are you looking at?
0064
1 A What I have in Exhibit Three is just the high
2 school, alone.
3 Q Okay.
4 A What I have in Exhibit Five would be more than
5 just the high school for the contract.
6 Q Okay. So, looking at Exhibit Three, we've got
7 just the high school at \$26,968,554.00. Then, if we
8 look at the 8-12, 2016, we've got a total project,
9 high school, at \$27 million. And we have said that
10 that looks like an additional \$400,000.00 going into
11 the project from July 15 to August 12th, with a total
12 project of \$40,594,704.00?
13 A Okay.
14 Q All right?
15 A Okay. That's what is in here. Let me look at
16 this, the unit price. The unit -- I'm sorry.
17 Q All right.
18 A The unit price is in the contract.
19 Q All right. So, Exhibit Five, the heading is,
20 "Change Order" showing a new contract sum of
21 \$37,700,000.00. Turn to page two, it is dated
22 January 11, 2017. And there is a project price
23 proposal of \$30,391,072.00 for the high school and the
24 field house?
25 A Yes.
0065
1 Q Okay?
2 A Yes.
3 Q So, what has happened to the baseball fields,
4 the track fields, the softball fields?

5 A They were pulled out into a different package.
6 Q Pulled out to a different package. And was
7 construction halted on those?
8 A No.
9 Q All right. So, at some point in time, they were
10 finished?
11 A Yes.
12 Q Okay. But for the high school and the field
13 house, you now have \$30,391,000.00?
14 A Yes.
15 Q Okay. You started with, for the high school and
16 field house, \$39,857,000.00 and some cents -- some
17 dollars?
18 A Yes.
19 Q Okay. So that there has been a drop in those
20 two of about \$9 million?
21 A Yes.
22 Q Okay. And that \$9 million was a loss of what?
23 A I can't recall what it was a loss of.
24 Q Okay. All right. Were you pleased with this
25 building? (Indicating.)

0066

1 A Yes.
2 Q What are its strengths?
3 MR. KEES: Object to form.
4 BY MS. JENKINS:
5 Q What are the strengths of this building?
6 A It is a LEED certified building.
7 Q Okay. What are the weaknesses of this building?
8 MR. KEES: Objection.
9 BY MS. JENKINS:
10 Q You have to answer. He can object all he wants
11 to; okay?
12 A Yes.
13 Q What are the weaknesses of this building? You
14 are the architect that designed it. Are there any
15 weaknesses?
16 MR. KEES: Same objection.
17 THE WITNESS: I probably would have
18 wanted it more -- have it closer to the road
19 so it would be more visible, so people could
20 see it.
21 BY MS. JENKINS:
22 Q Okay.
23 A That's the only thing I can think of.
24 Q Okay.
25 (WHEREUPON, Exhibit Number Six was

0067

1 marked for identification.)
2 BY MS. JENKINS:

3 Q Let's take a look at Exhibit Six.
4 MR. KEES: If you've got a little bit
5 longer to go, could we have a bathroom break?
6 MS. JENKINS: Do you want to take a
7 quick bathroom break or -- I'm just about
8 done.
9 MR. KEES: Oh, okay. I'll wait if
10 you're just about done.
11 THE WITNESS: I can hold it.
12 MS. JENKINS: Let's just take a --
13 THE WITNESS: No, no. Let's go. Let's
14 finish it.

15 BY MS. JENKINS:

16 Q Let's take a look. And I put it in upside down
17 because of the pages. But it's still attached, you
18 can see it.

19 A Okay.

20 Q Come over to what is noted as page two. These
21 are findings by the court expert. Come over to page
22 three, third paragraph. "According to the AD" --
23 that's the athletic director -- "at Mills, despite
24 PCSSD's claim, there is no women-only locker room at
25 the new complex." Was that a part of your design?

0068

1 A No.

2 Q Were you aware that there were no women-only
3 locker rooms?

4 A No.

5 Q Okay. Come down to the fifth paragraph, second
6 sentence. Would you read that?

7 A "The Mills facility lacks some of the interior
8 finishes found at Robinson, i.e., door and wall" --

9 Q This is page three.

10 A I'm sorry.

11 Q One, two, three, four, five. This is the fifth
12 paragraph.

13 A Oh, come down five. I thought you meant five
14 from that one.

15 Q No.

16 A Sorry.

17 Q And start with the second sentence.

18 A Let's see. The second. "After using a
19 port-a-potty for over seven years, Mills got a trailer
20 that serves as a unisex restroom with each gender
21 having two stalls."

22 Q So, this is in the practice field area?

23 A (No response.)

24 Q Go back to your diagram at the practice field
25 area.

0069

1 A Yes.

2 Q Are there no bathrooms? The concession and
3 toilet building was eliminated. Are there no
4 bathrooms available for the athletes?

5 A There are bathrooms at the field house and the
6 concession stand.

7 Q So, is the court expert incorrect that they are
8 using a trailer out there?

9 A I haven't -- I don't have any knowledge, because
10 I haven't been out there. But they should not be
11 using a port-a-potty out there.

12 Q Okay. All right.

13 MR. KEES: What did you say? I'm sorry.

14 THE WITNESS: I said, I have no -- I
15 haven't -- I forgot what I said. But this is
16 definitely -- I haven't seen -- the last time
17 I was out there, I did not see a trailer that
18 serves as unisex bathrooms for Mills.

19 BY MS. JENKINS:

20 Q Okay.

21 A And I have been out to the middle school as
22 recent as within the last month.

23 Q All right. So, that concern about a unisex
24 port-a-potty or trailer was not something that you
25 envisioned would be necessary with your design --

0070

1 A No.

2 Q -- as ultimately adopted?

3 A No.

4 Q All right. So, at any point in time were you
5 concerned about the quality of what was going to be
6 produced based on the changes that were made?

7 A No.

8 Q You were never concerned?

9 A No.

10 Q Never complained to anyone?

11 A No.

12 Q Okay. All right. During this construction
13 process, did you meet with anyone other than Derek
14 Scott from PCSSD?

15 A During the construction, yes.

16 Q All right. Who did you meet with?

17 A They would have Board meetings -- no.
18 Construction meetings, I'm sorry. They would have
19 construction meetings during the time of construction.

20 Q And when did construction start?

21 A I would have to back up. It was at least an
22 18-month process. So, it would have had to have
23 started in 2017.

24 Q Fall of 2017?

25 A I can't recall. I can't recall.

0071

1 Q Okay.

2 A That's a difficult question to answer, because
3 Mills was done in different packages. So, there was a
4 site package versus the construction of the building
5 package versus the field house -- not field house,
6 versus the football field package, they were different
7 packages. So, if you were to ask me when did the
8 construction of Mills start, it would have actually
9 started in 2016, where it was just the site stuff.

10 Q All right. When did construction of the
11 athletic and sports facility start?

12 A I can't recall.

13 Q Was the sports facility -- was that construction
14 commenced before the building of the high school?
15 Which came first?

16 A I can't recall.

17 Q You can't recall?

18 A No.

19 Q All right. Did you interact with any members of
20 the Board at any time, at any point in the
21 construction and conclusion of the Mills project?

22 A During those meetings -- during any part of the
23 construction? I'm sorry. Be more specific, please.

24 Q Let's just back up.

25 A Okay.

0072

1 Q You mentioned that at the meeting in March of
2 2016, July of 2016 that Doctor Guess was not present,
3 but that you dealt with Derek Scott.

4 A Yes.

5 Q Did you deal with Doctor Warren at any time?

6 A Before the completion of the building?

7 Q Yes.

8 A Yes.

9 Q And when was that?

10 A During the meetings that we would have at the
11 administration building.

12 Q And when did those start, do you recall?

13 A No.

14 Q Was that after the newspaper article about the
15 inequities between the two buildings, the Mills and
16 Robinson?

17 A I can't recall.

18 Q All right. Who attended those meetings that you
19 had with Doctor Warren?

20 A Oh, my goodness. Representatives from WD&D,
21 representatives from Baldwin & Shell that was during
22 the construction at Mills, representatives from WER,

23 representatives from Baldwin & Shell during the
24 construction at Robinson.

25 Q And what were the purpose of those meetings?

0073

1 A And also members of like -- other members of
2 PCSSD.

3 Q And what were the purpose of those meetings?

4 A To give an update on construction.

5 Q Why was it necessary to have an update on
6 construction?

7 A It's something that we do for every project to
8 let the owner know if we are still on schedule.

9 Q And was this in September of 2017?

10 A I can't recall.

11 Q And how did -- who conducted these meetings?

12 A Throughout the construction --

13 Q The ones where everyone came together and that
14 Doctor Warren attended?

15 A Doctor Warren.

16 Q She led those meetings?

17 A Yes.

18 Q Was she interim superintendent at the time?

19 A Yes.

20 Q So, she didn't become interim superintendent
21 until July of 2017.

22 A I can't recall. But it was after construction
23 had started.

24 Q It was after construction had started that --

25 A Yes.

0074

1 Q And she was interim superintendent, that you
2 began meeting with her?

3 A Yes.

4 Q Before that, who was your contact with PCSSD?

5 A Derek Scott.

6 Q All right. Did you interact with Doctor Remele,
7 Board President, at any time?

8 A Yes.

9 Q And on what occasion?

10 A During one of the meetings, she would speak.

11 Q Was this --

12 A Or she would ask a question and we would answer.

13 Q Was this one of the meetings that Doctor Warren
14 hosted?

15 A Yes.

16 Q And where were those meetings held?

17 A At the Administration Building.

18 Q In what particular --

19 A It's a conference room --

20 Q Okay.

21 A -- at the building on the north side. Wherever
22 they would have the Board meetings, it's just off of
23 that.

24 Q Off of that?

25 A Yes, off of that.

0075

1 Q All right. Any other possible interaction with
2 Doctor Remele?

3 A No.

4 Q When the construction was completed?

5 A No.

6 Q Are you currently involved in any construction
7 projects, or is WD&D involved in any current
8 construction projects with PCSSD?

9 A Yes.

10 Q All right. And which project is that?

11 A Mills Middle School.

12 Q Mills Middle School. All right. Any other
13 projects that you are involved in?

14 A I can't recall.

15 Q All right.

16 A I can't recall.

17 Q Did you install a cornerstone at Mills High
18 School when it was completed?

19 A No.

20 Q Excuse me?

21 A No.

22 Q Did you order one?

23 A No.

24 Q Okay.

25 A I know what you are asking.

0076

1 Q What am I asking?

2 A You're asking about a plaque.

3 Q Yes.

4 A We don't do that, a cornerstone.

5 Q Oh, you do plaques and not cornerstones any
6 longer?

7 A Correct.

8 Q All right. Did you order one for Mills?

9 A Yes.

10 Q And did you have any problem or any objection --

11 A No.

12 Q -- from anyone regarding the placement of a
13 plaque?

14 A No.

15 Q Have you visited Robinson Middle School?

16 A No.

17 Q Have you visited Sylvan Hills High School, that
18 construction project?

19 A No.
20 Q Have you visited Maumelle High School?
21 A Yes.
22 Q And what are your -- as an architect, what is
23 your assessment of that building?
24 MR. KEES: Object to form.
25 BY MS. JENKINS:
0077
1 Q Is it a solid building?
2 A Yes.
3 Q All right.
4 MR. DAVIDSON: You got close, but I
5 don't think you crossed the line. That's a
6 good way to phrase it.
7 BY MS. JENKINS:
8 Q How much would a building like Maumelle High
9 cost?
10 A I don't know.
11 Q You have no idea?
12 A No.
13 Q All right. What was Wittenberg's compensation
14 for the Mills High School project?
15 MR. KEES: Object to form. Oh, WW&D?
16 MS. JENKINS: Yes.
17 MR. KEES: Or WD&D.
18 THE WITNESS: I don't know.
19 BY MS. JENKINS:
20 Q What was Baldwin & Shell's compensation?
21 A I don't know.
22 Q Okay. All right.
23 MS. JENKINS: Can we just take a quick
24 break and I may have just one other question?
25 All right?
0078
1 MR. DAVIDSON: Sure.
2 (WHEREUPON, a break was taken.)
3 BY MS. JENKINS:
4 Q Let's go back to Exhibit Six, the narrative,
5 fourth paragraph. The court expert refers to the --
6 would you read the sentence beginning with, "It is
7 unclear"?
8 A Okay. Let's see. I don't have my glasses. "It
9 is unclear if or how the budgets changed and whether
10 or not the district is in compliance with the Court's
11 order of January 12th, 2015 approving the district's
12 proposal to spend" -- no, sorry, I'm sorry.
13 Q Circa?
14 A "'Circa \$50,000,000.00 for the new Mills High
15 School' and 'circa \$5,000,000.00 for the middle school
16 conversion to a high school'."

17 Q Okay. Did you realize that \$50 million was the
 18 court's order for the high school?
 19 A No, I did not.
 20 Q And the last we saw with Exhibit Five that
 21 \$37,700,000.00 was the proposed project price for both
 22 the school and the field house?
 23 A Yes.
 24 Q All right. Okay. What is the budget or project
 25 price proposal for the middle school? For the middle
 0079
 1 school?
 2 A For Mills Middle School?
 3 Q Yes. That you are currently working on?
 4 A Oh, goodness. The one we are currently working
 5 on is a kitchen renovation, and I don't know what that
 6 budget is.
 7 Q Okay. All right. And I want to make sure I
 8 understand that at no time from the March 8th, 2016
 9 through July of 2017 that Doctor Guess did not attend
 10 any of those meetings. Is that your best
 11 recollection?
 12 A He did not.
 13 Q Okay. Tell me about the plaque that is
 14 installed once a building is completed. Is that just
 15 a formality, is there a --
 16 A Yes. For schools?
 17 Q Yes.
 18 A For schools, yes. And basically that plaque
 19 will consist of Board members, the superintendent, the
 20 name of the high school, and sometimes their logo.
 21 Q Okay.
 22 A And the county -- or district, I'm sorry, or the
 23 district that school belongs to.
 24 Q Okay.
 25 A Whether it's Little Rock or Pulaski County or
 0080
 1 Saline.
 2 Q It's like historical cornerstones that you no
 3 longer do that, but you have a plaque for?
 4 A Yes.
 5 Q And did you order one for Mills?
 6 A Yes.
 7 Q And was there any opposition to or any
 8 displeasure with the fact that you ordered one?
 9 A No. No. We only have to make sure that we get
 10 all the names spelled correctly.
 11 Q Okay.
 12 A I might spell John a little bit different from
 13 somebody else.
 14 Q Yes.

15 A So, we have to make sure that we get the names
16 spelled correctly.
17 Q Well, thank you so much for coming. And as you
18 know, we asked you to come because you are planning a
19 30-day visit or is it a working --
20 A I'm here now, due to the coronavirus.
21 Q So, you are not going?
22 A I'm not going anywhere.
23 Q Well, that's why, you know, I thought --
24 A Yes. Once it kept extending, my wife has MS,
25 and I just can't risk taking her over there and coming

0081

1 back with something.
2 Q Yes.
3 A I have a joke, but I don't want that to be on
4 the record.
5 Q Well, I scheduled you for deposition because,
6 you know, I didn't know if or how -- what condition
7 you would be in after spending a month in Africa.
8 A Yes.
9 Q If you would have notified me --
10 A Or if I would have made it back. I have plans
11 to build a house, but they were on hold until we made
12 it back, because I was like, you know, you never know
13 what might happen. No need to spend some money if we
14 don't make it back.
15 MS. JENKINS: Well, thank you so much
16 for coming.
17 THE WITNESS: My pleasure.
18 MS. JENKINS: Bye-bye.
19 MR. KEES: Let me ask just a few real
20 fast.

21 CROSS EXAMINATION

22 BY MR. KEES:

23 Q Do you have any knowledge as to whether work is
24 still going on at Mills High School?
25 A No, I don't.

0082

1 Q You don't. Okay. And when is the last time you
2 have been to the athletic facility at Mills, the
3 complex?
4 A The complex? This is 2020. 2019, sometime in
5 2019.
6 Q Oh, I thought you said you had been there just a
7 month ago.
8 A Well, no. I have been to the middle school but
9 I -- when I drove around. I didn't stop and go into
10 the complex. But I knew that there was no
11 port-a-potty around that building, because I drove --
12 I drove around. I drove around the entire campus.

13 Q Okay.

14 A Just to look and see how everything was coming
15 up, what we had done, what we were doing. I noticed
16 some ticket booths and stuff like that that I hadn't
17 seen since I did the drawings. So, I drove around the
18 entire campus. And that's how I know there were no
19 port-a-potties.

20 Q All right. So, the court's observation that we
21 read was from September and October of 2017. Had the
22 project developed and the site changed from September
23 and October of 2017 to the present?

24 A Yes, most definitely.

25 MR. KEES: Okay. That's all I have.

0083

1 Thank you, sir.

2 THE WITNESS: In 2017, the building was
3 still under construction, so you would have
4 had trailers and port-a-potties and ATVs and
5 everything out there on campus.

6 MR. KEES: Okay. That's all I have.

7 Thank you, sir.

8 MS. JENKINS: I don't have anything
9 else.

10 MR. DAVIDSON: Thank y'all. Y'all stay
11 safe.

12 (WHEREUPON, Exhibit Number Seven was
13 marked for identification.)

14 (WHEREUPON, at 11:45 a.m., the taking of
15 the above-entitled deposition was concluded.)

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1 Exhibit One.

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1 Exhibit Three.

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1 Exhibit Six.

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1 Exhibit Seven.

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1 C E R T I F I C A T E

2 STATE OF ARKANSAS)

3)

4 COUNTY OF PULASKI)

5 I, DEBBYE L. PETRE, Certified Court
6 Reporter in and for the County of Pulaski, State of
7 Arkansas, duly commissioned and acting, do hereby
8 certify that the above-entitled proceedings were taken
9 by me in Stenotype, and were thereafter reduced to
10 print by means of computer-assisted transcription, and
11 the same fully, truly, and correctly reflects the
12 proceedings had.

13 I FURTHER CERTIFY that I am not attorney
14 or counsel of any of the parties, nor am I relative or
15 employee of any attorney or counsel or party connected
16 with the action, and have no interest in the outcome
17 or results of this litigation.

18 WHEREFORE, I have subscribed my
19 signature and seal as such court reporter in the City
20 of Little Rock, County of Pulaski, State of Arkansas,
21 this the 9th day of June, 2020.

22

23 _____
DEBBYE L. PETRE, CCR
COURT REPORTER IN AND FOR
PULASKI COUNTY, ARKANSAS

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I, Earnest Lamont Duckery, do hereby certify
that I have read the foregoing pages, and the
same is a true and correct transcription of the
proceedings that occurred, except for the
corrections (if any) that appear on the
Errata Sheet.

Earnest Lamont Duckery

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STATE OF ARKANSAS)

13

) ss.:

COUNTY OF _____)

14

WITNESS MY HAND AND SEAL, this _____

15

day of _____, 2020.

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17

NOTARY PUBLIC

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MY COMMISSION EXPIRES:

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